



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

REYNALDO RIVAS,

NO. C 01-20409 JW

Plaintiff(s),

**ORDER DENYING CERTIFICATE OF
APPEALABILITY**

v.

ANTHONY NEWLAND,

Defendant(s).

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 20, 2005, the Court denied the petition on the merits. On July 5, 2005, Petitioner filed a notice of appeal, which the Court construes as a request for a certificate as a notice of appeal. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997). The Court denies Petitioner's request for a certificate of appealability.

DISCUSSION

A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability (formerly known as a certificate of probable cause to appeal). 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A judge shall grant a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues satisfy this standard. See id. § 2253(c)(3).

"Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."

1 Slack v. McDaniel, 529 U.S. 473, 483 (2000).

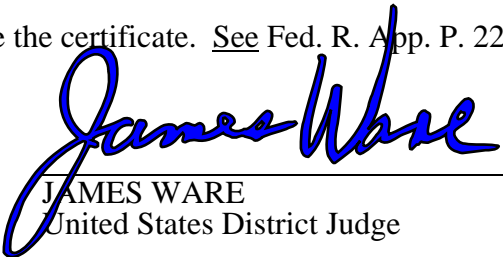
2 Except for substituting the word “constitutional” for the word “federal,” section 2253(c)(2)
3 codified the standard announced by the United States Supreme Court in Barefoot v. Estelle, 463 U.S.
4 880, 892-93 (1983). In Barefoot, the Court explained that “a substantial showing of the denial of [a]
5 federal right” means that a petitioner “must demonstrate that the issues are debatable among jurists
6 of reason; that a court could resolve the issues [in a different manner], or that the questions are
7 adequate to deserve encouragement to proceed further.” Barefoot, 463 U.S. at 893 n.4 (citations and
8 internal quotations omitted; emphasis in original). Any doubts about whether the Barefoot standard
9 has been met must be resolved in petitioner’s favor. Lambright v. Stewart, 220 F.3d 1022, 1024-25
10 (9th Cir. 2000).

11 The Court denied the instant habeas petition after careful consideration of the merits. The
12 Court found no violation of Petitioner’s federal constitutional rights in the underlying state court
13 proceedings. Petitioner has failed to demonstrate that jurists of reason would find it debatable
14 whether this Court was correct in its ruling. Petitioner’s request for a certificate of appealability is
15 DENIED.

16 The Clerk shall transmit the file, including a copy of this order, to the Court of Appeals.
17 Petitioner may then ask the Court of Appeals to issue the certificate. See Fed. R. App. P. 22(b).

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19 Dated: April 18, 2006

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JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2
3 Reynaldo Rivas
K-48757
4 Correctional Training Facility
Highway 101N, P. O. Box 689
5 Soledad, Ca 93960

6 Sharon R. Wooden
U.S. Attorney General's Office
7 455 Golden Gate Ave.
Suite 11000
8 San Francisco, CA 94102-7004

9
10 **Dated: April 18, 2006**

Richard W. Wieking, Clerk

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12 **By: /s/ m. peralta**
13 **Melissa Peralta**
14 **Courtroom Deputy**
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